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SEP 16 1975

IN THE SUPREME COURT OF THE STATE OF UTAH

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

THE STATE OF UTAH,
Plaintiff-Respondent

vs.

GEORGE MARTINEZ,
Defendant-Appellant

Case No. 14025

BRIEF OF APPELLANT

Appeal from a jury verdict of guilty in the Third District Court,
the Honorable Bryant H. Croft, presiding.

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FILED

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Clerk, Supreme Court

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Cases Cited

Anders v. California, 386 U. S. 738 (1967)

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :

Plaintiff-Respondent :

vs. :

GEORGE MARTINEZ :

Case No. 14025

Defendant-Appellant :

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, GEORGE MARTINEZ, appeals from a jury verdict of guilty in the Third District Court.

DISPOSITION IN THE LOWER COURT

The appellant was tried to a jury in the Third District Court on February 11, 1975, found guilty of the crime of Attempted Aggravated Robbery and sentenced to the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of his conviction. Counsel on appeal requests permission to withdraw from the appeal and submits the brief in compliance with Anders v. California, 386 U. S. 738 (1967).

STATEMENT OF FACTS

On the morning of February 11, 1975 the attorney for the defense moved to exlude identification evidence (R-30). A Hearing on the motion before trial was not held (T-5, 7, 23, 24, 25) on the grounds that the motion was not timely filed (R-30)(T-23), the state's witness Mrs. Kittie Larson testified that on December 9, 1974 she was working at the Glendale Market as a clerk (T-4) that at about 7:00 p. m. two men came in (T-4) and one of the men pulled a knife (T-4) and said to her "give me your money" (T-5). Mrs. Larson identified the individual who pulled the knife as the defendant (T-7) and also identified a knife and a gun pulled by him (T-8). Mrs. Larson testified further that later that night she identified the defendant for the police at approximately 13th South and California (T-6). Lee Nielson testified that he also was working at the Glendale Market on the night in question (T-29) that an individual was present in his store with a gun (T-30), that later that night he identified the individual for the police (T-31) and that that individual is the defendant (T-31). Mr. Nielson also identified exhibit 2 as the gun used in the incident (T-32).

Thomas Zdunick testified that he was present at the Glendale Market on the date in question (T-38) that he saw the defendant standing by the cash register with a gun (T-38). Mr. Zdunich testified further that

later that night he identified the individual for the police (T-39) and that individual was the defendant (T-39).

Officer Holfeltz testified that on the night in question he had the defendant and two others in custody at approximately 13th South and 13th West when he was told by other officers that the individuals were suspects in an attempted robbery (T-48).

Officer Bruce Maxwell testified that on the night in question he transported the three store employees who testified earlier to where Officer Holfeltz had three suspects in custody (T-56). Officer Maxwell testified that the three employees identified the defendant (T-56).

Albert Miera testified that he was with the defendant on the date of the crime from 8:00 a.m. until the defendant was arrested (T-62, 63) and that they didn't attempt to rob the market (T-67, 68).

ARGUMENT

Mr. Martinez alleges that it was error on the part of the Court to allow identification evidence in without first hearing his motion to exclude such evidence and further that the evidence introduced at his trial was not sufficient to merit conviction.

REQUEST FOR WITHDRAWAL OF COUNSEL

The foregoing brief discusses the only issues presentable on appeal and counsel for appellant believing that neither issue will prevail, requests permission to withdraw.

Pursuant to Anders v. California, supra, appellant should be allowed to persue these points and any additional points pro-se, and then this court can proceed to a discussion on the merits.

Respectfully submitted

JACK W. KUNKLER
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

I certify that in compliance with Anders v. California, supra, I have caused to be mailed a copy of the foregoing brief to the appellant George Martinez, Utah State Prison, P.O. Box 250, Draper, Utah, this 10TH day of December, 1975.



JACK W. KUNKLER

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